



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CITY OF MANCHESTER	:	
(HIGHWAY DEPARTMENT)	:	
	:	CASE NO. A-0408:3
Complainant	:	
	:	DECISION NO. 93-124
v.	:	
	:	
MICHAEL KILRAIN AND AMERICAN	:	
FEDERATION OF STATE, COUNTY	:	
AND MUNICIPAL EMPLOYEES,	:	
LOCAL 298	:	
	:	
Respondent	:	

BACKGROUND

The City of Manchester (City) filed a Petition for Declaratory Judgment on August 5, 1993 against Michael Kilrain (Kilrain) and Local 298, American Federation of State, County and Municipal Employees (AFSCME). The PELRB provided Notice of Filing on August 6, 1993 indicating that any response to the City's petition was due to be filed on or before the close of business on August 20, 1993. No answers or responsive pleadings were received. The City then filed an amendment to its Petition on September 2, 1993 asserting an element of urgency given that collateral proceedings had been scheduled before another forum (New Hampshire Department of Labor/NHDOL) on October 4, 1993 which that agency declined to defer. Because of this schedule and giving due consideration to the lack of any responsive pleadings in this case, we make the following findings and determinations.

FINDINGS OF FACT

1. The City is a "public employer" within the meaning of RSA 273-A:1 X.
2. AFSCME, Local 298, is the duly certified bargaining agent for employees of the City's Highway Department.
3. Kilrain is a "public employee" within the meaning of RSA 273-A:1 IX and is in the

bargaining unit represented by AFSCME.

4. The City and AFSCME are and have been, at all times pertinent to this matter, parties to a collective bargaining agreement (CBA). The CBA contains a workable grievance procedure as required under RSA 273-A:4 in that it provides that "[t]he decision of the arbitrator shall be final and binding upon the parties as to the matter in dispute."
5. On June 11, 1990 AFSCME filed a grievance on behalf of Kilrain and fifteen (15) other bargaining unit members alleging that the City had violated several Articles of the CBA "... when they failed to pay proper rate for employees covered under weekly schedule salary," Article VII A.
6. On January 9, 1991 the grievance was heard before Arbitrator Gary Altman. On March 19, 1991, Altman issued his decision and award. In it he stated "...the City shall calculate the grievants' forty hour per week salary in the same manner in which it compensates those employees who work an "extended workweek" from the date of grievance was filed, June 11, 1990."
7. Pursuant to Altman's award, the City paid all of the grievants, including Kilrain, retroactively to June 11, 1990. There has been no complaint from AFSCME regarding the implementation of Altman's award.
8. On May 12, 1993 Kilrain filed a wage claim with NHDOL independently of AFSCME.
9. The NHDOL has scheduled a hearing on Kilrain's wage claim for October 4, 1993. The City asked NHDOL to defer its hearing pending the PELRB's ruling on the City's petition for declaratory judgment. Said request to defer was denied by NHDOL on August 18, 1993.

DECISION AND ORDER

Upon review of an uncontested record in this case and absent any responsive pleadings from the named respondents, we are satisfied that the respondents have availed themselves of the relief contemplated both under the contract and that portion of the statute calling for workable grievance procedures. RSA 275-A:4

Since a grievance was filed, processed, heard and a decision rendered, which happened to be favorable to the respondents herein, there is no further role for the PELRB because there is no evidence of an actionable breach of contract. RSA 275-A:5 I (h) and II (f). The parties to the CBA are the City and AFSCME. There is no evidence that AFSCME is a party to or is encouraging Kilrain's pending complaint with NHDOL. Notwithstanding our opinion that the respondents have exhausted and been satisfied by compliance with the negotiated grievance procedure which ends with final and binding arbitration, we find no authority for us to interpose our judgment on statutorily conferred rights permitting Kilrain to pursue a wage claim before NHDOL. Accordingly, the City's Petition for Declaratory Judgment is DISMISSED without further action.

Signed this 16th day of September, 1993.



EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Richard W. Roulx and E. Vincent Hall present and voting.